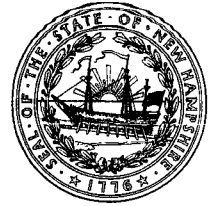




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Mr. Douglas Brown
PO Box 10
West Swanzey, NH 03469

Re: Homestead Woolen Mill Dam
Dam #232.01

ADMINISTRATIVE ORDER
BY CONSENT
No. -WD 06-007

February 16, 2006

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Water Division to, and with the consent of, Mr. Douglas Brown, pursuant to RSA 482:12 and 482:87. This Administrative Order by Consent is effective upon signature by both parties.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Mr. Douglas Brown is an individual having a mailing address of PO Box 10, West Swanzey, New Hampshire 03469.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482, DES regulates the construction and maintenance of dams so as to meet the stated statutory objectives, including the regulation of water levels, the lessening of flood damage, and the enhancement of public safety. Pursuant to RSA 482:87, the Commissioner of DES has adopted NH Admin. Rules Env-Wr 100-700 to implement this program.
2. According to DES records, Mr. Douglas Brown owns the dam in West Swanzey, New Hampshire known as the Homestead Woolen Mill Dam, further identified as Dam #232.01 (the "Dam"). The Dam is located on the Ashuelot River downstream of the Thompson Covered Bridge.
3. RSA 482:12 requires DES to periodically inspect all dams in the state which may pose a menace to public safety, and to take action to ensure that the dam is repaired if the inspection indicates that the public safety so requires.
4. RSA 482:2, V defines a "dam in disrepair" as a dam which is a menace to public safety and is incapable of safely impounding flood waters to its crest, or is incapable of maintaining a reasonably constant level of waters impounded or which does not contain adequate gates and

sluiceways to provide for the holding or controlled discharge of waters impounded.

5. RSA 482:11-a requires the owner of a dam to maintain and repair the dam so that it does not become a dam in disrepair.

6. Env-Wr 101.25 defines "menace to public safety" as any dam, the failure of which would threaten life or property. Property, when used in this context, means buildings, structures or other real estate.

7. Env-Wr 101.07 defines "Class A Structure" as a dam with a low hazard potential, the failure of which would result in low economic loss to structures or property or cause reversible environmental losses to environmentally-sensitive sites.

8. The Dam has been classified as a Class A Structure by DES because of its size and because its failure would result in damage to the upstream Thompson Covered Bridge, a nationally registered historic site, as well as cause environmental losses to an environmentally-sensitive site, the habitat of the dwarf wedge mussel, an endangered species.

9. On December 19, 1997, an inspection of the Dam was conducted in accordance with RSA 482:12 and Env-Wr 302.02 and the following deficiencies were noted:

- a. The timber cribbing showed signs of deterioration with vegetative growth emerging from the face of the spillway.
- b. Concrete on both the left and right spillway abutment walls was deteriorated and spalled. Although this deterioration does not pose an immediate threat to the structural integrity of the Dam, periodic repairs are needed to maintain these concrete surfaces and prevent corrosion of the internal re-bar.
- c. It was unclear whether the Dam leaks from the downstream toe of the spillway due to water flowing over the spillway.
- d. There is no operations and maintenance plan on file.

10. On August 4, 1998, DES sent a Letter of Deficiency (LOD) to Mr. Brown requesting that the deficiencies be corrected by December 1, 1998.

11. On June 1, 2000, DES received an email from Mr. Brown stating that he had filed an application with DES to breach the Dam.

12. On July 17, 2000 the Town of Swanzev expressed an interest in purchasing the Dam from Mr. Brown in order to prevent its removal.

13. From June 2000 through September 2005, the impacts of removing the Dam were studied in

order to pursue the best option for the Dam owner, Town and river.

14. On August 24, 2005, DES sent Mr. Brown a letter advising him to make a decision of removal or repair of the Dam. Mr. Brown indicated that the Town of Swanzey had not made a decision on purchasing the Dam.
15. On September 20, 2005, DES released the final Homestead Dam Feasibility Study which provided technical information on the impacts of removing the Dam and cost estimates for the removal of the Dam.
16. On October 27, 2005, in response to the flooding in southwestern New Hampshire, an inspection of the Dam was conducted by DES. Failure of the right third of the downstream timber crib spillway facing had occurred. Further damage is presumed to the spillway however high water prevented a thorough inspection.

D. DETERMINATION OF VIOLATIONS

1. The Owner has violated RSA 482:11-a by failing to maintain the Dam to prevent it from becoming a "dam in disrepair".

E. ORDER

Based on the above findings, DES hereby orders Mr. Brown, and Mr. Brown agrees to undertake and complete the following actions in accordance with the time schedule specified:

1. By June 1, 2006, submit a schedule for acceptable repair or removal of the Dam to DES or complete the sale of the Dam to the Town of Swanzey.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows:

Grace Levergood, P.E., Dam Safety Engineer, Dam Bureau
DES Water Division
29 Hazen Drive
Concord, NH 03301
Fax: (603) 271-7894
E-mail: glevergood@des.state.nh.us

F. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, Mr. Brown agrees that this Order shall apply to and be binding and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, Mr. Brown waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Water Resources Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.

Homestead Mills Inc
COPY
Douglas J. Brown
Douglas J. Brown, Owner

3/9/06
Date

NH Department of Environmental Services

Harry T. Stewart
COPY
Harry T. Stewart, P.E., Director
Water Division

3/17/06
Date

Michael P. Nolin
COPY
Michael P. Nolin, Commissioner

3/20/06
Date

cc: Gretchen Hamel, Legal Unit Administrator ✓
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB